IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of: SHAUNA M. COWAN, Respondent, v. JERRY D. COWAN, Appellant.	No. 32269-2-II UNPUBLISHED OPINION

ARMSTRONG, J. -- Jerry Cowan appeals a decree dissolving his marriage to Shauna, arguing that the trial court erred in valuing his business and monthly income, in awarding Shauna excessive maintenance, in imputing no income to Shauna and requiring him to pay 100 percent of special expenses, and in ordering him to pay Shauna's attorney fees. We find no error and, therefore, affirm.

FACTS

Jerry and Shauna Cowan married in September 1993. Jerry was employed as a used car salesman, and Shauna worked in the office of a door distributor. According to their tax returns, the couple's annual income in 1995 and 1996 was $89,689 and $111,803 respectively. In March 1997, their first child, Justen, was born, and Shauna left the workforce. Still, the family's reported income in 1997 and 1998 was over $96,000 each year.

In 1999, Jerry left his employment, and the Cowans started their own business, Jerry's Auto Sales. According to tax returns, the family income decreased markedly at this point. The couple reported an annual income of $10,922 in 1999; $18,502 in 2000; $77,219 in 2001; and

$38,947 in 2002. But Shauna never noticed a decrease in the family's standard of living.

Twin daughters, Alexes and Sloane, are about a year younger than Justen. They were born prematurely and required extra care during their first few years. One of them still had developmental problems at the time of trial. Justen also has a leg condition that has required surgery and the use of a wheelchair. Shauna was primarily responsible for the children while Jerry ran the business.

Shauna petitioned for dissolution in August 2003. In a proceeding in which Jerry did not appear and was not represented by counsel, a superior court commissioner issued a temporary order requiring Jerry to pay $4,200 per month in child support and spousal maintenance. Shauna estimated her monthly expenses at $4,154.05. Jerry initially paid her the $4,600 per month, but stopped paying when the court order was issued.

At trial in August 2004, Jerry testified that he was on the verge of bankruptcy. He offered evidence that Jerry's Auto Sales's credit lines were overdrawn and that Jerry had $88,000 of unsecured debt.

Shauna testified that Jerry had threatened to ruin the business if she pursued alimony. According to Jerry's balance sheets, the book value of Jerry's Auto Sales was $37,540 in September 2001; $183,541 in May 2002; $187,033 in March 2003; $386,789 in November 2003; and $344,049 in May 2004. There was evidence that the family's income and the company's profitability figures were misleading because family expenses were regularly paid out of the business.

In his oral opinion, the trial judge stated that he was not convinced there was sufficient evidence to value Jerry's Auto Sales. Nonetheless, he found Shauna's statements about the family's financial situation more convincing than

Jerry's. He valued the business at $285,000. Jerry received the business, other personal property, and the community debt. Shauna received the family house, other personal property, and her personal debt.

Shauna received custody of the children. For purposes of child support calculations, the court found that Jerry's monthly income was $8,500. The court imputed no income to Shauna. The court required Jerry to pay $3,350 per month in spousal maintenance and $794.95 per month in child support. Shauna's share of the basic support obligation was $834.05 per month. Although Shauna had estimated she could complete a retraining program and return to work full time in two years, the trial court found that she was underestimating the rigors of motherhood and school and ordered the maintenance payments for three years. The court also ordered Jerry to pay all daycare and extraordinary health care expenses. Finally, the court ordered Jerry to pay all of Shauna's attorney fees.

Jerry timely appealed but he did not designate the attorney fee award in his notice of appeal.

ANALYSIS

I. Jerry's Auto Sales, Inc.

Jerry assigns error to the trial court's valuation of Jerry's Auto Sales at $285,000. The trial judge stated in an oral opinion that he was not convinced there was sufficient evidence as to the value of the business. The evidence showed that the business's credit lines were overdrawn. And Jerry testified that the business was on the verge of bankruptcy. Because the business was awarded to Jerry, he reasons that the trial court's valuation made it appear as if he was awarded a

greater share of the assets than he actually received.

We review a trial court's property distribution in a dissolution proceeding for manifest abuse of discretion. *In re Marriage of Pilant*, 42 Wn. App. 173, 176, 709 P.2d 1241 (1985) (citing *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984)). A trial court abuses its discretion when "no reasonable person would have ruled as the trial court did on the facts before it." *Pilant*, 42 Wn. App. at 176 (citing *In re Marriage of Young*, 18 Wn. App. 462, 465, 569 P.2d 70 (1977)). "And where the trial court has weighed the evidence, the reviewing court's role is simply to determine whether substantial evidence supports the findings of fact and, if so, 'whether the findings in turn support the trial court's conclusions of law.'" *In re Marriage of Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999) (quoting *Org. to Pres. Agric. Lands v. Adams County*, 128 Wn.2d 869, 882, 913 P.2d 793 (1996)).

Here, the judge's comment about the evidence and Jerry's testimony of impending ruin notwithstanding, substantial evidence supports the value assigned to the business. The most recent balance sheet offered by Jerry at the time of trial showed total liabilities of $112,976.51 and total assets of $457,026.22. A reasonable trier of fact could have deduced from this evidence that the value of the business was the difference, $344,049.71. Taking into account Jerry's statements that business was bad, the trial court did not abuse its discretion in valuing the business at $285,000 less than three months after this most recent accounting.

II. Jerry's Income

Jerry claims the trial court erred in assigning him an $8,500 monthly income for purposes of calculating child support. This translates to an annual income of $102,000. Because according to their tax returns, the couple earned that much in only one year, 1996, he argues that the trial

court abused its discretion.

In determining a party's income, the trial court must consider all income and resources of the parent's household. RCW 26.19.071(1). Although the trial court has discretion in determining income, it has no discretion as to what factors it must consider. *See In re Marriage of Jonas*, 57 Wn. App. 339, 340, 788 P.2d 12 (1990) (citing *Smith v. Smith*, 13 Wn. App. 381, 384, 534 P.2d 1033 (1975)). Past, current, and future income are all relevant factors. *In re Marriage of Payne*, 82 Wn. App. 147, 152, 916 P.2d 968 (1996).

Jerry's income was impossible to determine with any precision. From the time the couple started Jerry's Auto Sales in 1999, their reported annual total income varied from $10,922 to $77,219. But for the four years before starting Jerry's, their reported income ranged from $89,689 to $111,803. And Shauna testified that she noticed no change in their lifestyle during the transition to self-employment, suggesting that their income level remained the same. While there is a disparity between this testimony and the family's tax returns, it is also clear that the family's personal expenses were regularly paid out of the business. Thus, the business would have appeared less profitable than it really was, and the family could have appeared to be earning less while still having the same financial resources.

When a party deliberately conceals income, we have been reluctant to disturb the trial court's findings. *See*, *e.g.*, *In re Marriage of Dodd*, 120 Wn. App. 638, 646, 86 P.3d 801 (2004). While an annual income of $102,000 seems high compared to recent tax returns, Jerry did earn $96,924 in 1998, when Shauna had stopped working the previous year. Given the haziness of the business's profitability, caused by Jerry's accounting practices, and the evidence that the family maintained its standard of living after the business began, it was not unreasonable for the trial court to determine that Jerry was capable of

earning $8,500 per month.

III. Maintenance

Jerry challenges the trial court's award of spousal maintenance to Shauna, on the grounds that the amount is more than he is capable of paying and more than Shauna needs. In determining spousal maintenance, the trial court must consider all relevant factors, including the spouses' respective needs and resources, the apportionment of property, the time needed for employment training, and the standard of living established during the marriage. RCW 26.09.090. A maintenance award based upon a fair consideration of the statutory factors is within the trial court's discretion. *In re Marriage of Crosetto*, 82 Wn. App. 545, 558, 918 P.2d 954 (1996).

The monthly payment award is fair considering the relevant factors. Jerry's claim that the award is beyond his ability to pay is addressed by the discussion above. And Jerry's net share of the assets was over 40 percent higher than Shauna's.[1]

As for Shauna's needs, although she stated that she "could get by" with $3,500 per month, she also stated that she "would probably be very, very tight." Report of Proceedings (RP) at 75-76. Presumably, being "very, very tight" is inconsistent with the standard of living established during a marriage in which the family had yard service, Shauna drove a Mercedes, Jerry owned more than one Harley Davidson motorcycle, and the children attended private school. Shauna submitted a detailed estimate of her monthly expenses, totaling $4,154.05. The trial court did not abuse its discretion in awarding her $4,144.95 in monthly maintenance and child support payments.

[1] The court awarded Jerry property valued at approximately $331,410, and he was assigned approximately $140,973 in liabilities, netting $190,437. Shauna received approximately $295,638 in property and $187,052 in liabilities, netting $108,586.

What is less clear is why the trial court ordered payments for three years. Shauna testified that she intended to enroll in an administrative course that would take "[u]p to two years." RP at 73. In response to a question from the bench, she stated that she thought she could

finish her training and find a job within 24 months. In closing argument, her counsel asked that the court award her the full maintenance payment for two years and then $500 per month for a third year. But the trial judge addressed this evidence in his oral opinion, stating that he believed Shauna was underestimating the demands of attending school and caring for three children on her own. Because this decision was based on a fair consideration of the evidence, the court did not abuse its discretion.

IV. Shauna's Income

Jerry assigns error to the trial court's failure to impute income to Shauna. When a parent is voluntarily unemployed or underemployed, the trial court must impute income to that parent. RCW 26.19.071(6). This applies to any parent who is "employable," regardless of good faith reasons for not working. *Jonas*, 57 Wn. App. at 340; *see also In re Marriage of Brockopp*, 78 Wn. App. 441, 445, 898 P.2d 849 (1995). In deciding whether unemployment is voluntary, the trial court considers "that parent's work history, education, health, and age, or any other relevant factors." RCW 26.19.071(6).

None of the offered authority addresses precisely this situation. In *Jonas*, we held that income must be imputed to both parents where one parent was unemployed while attending school and the other was unemployed because she had "chosen to stay at home to care for her children." *Jonas*, 57 Wn. App. at 340. In *Brockopp*, we held that income must be imputed to a mother who had not sought employment because she preferred to stay home and care for her children and maintain the household for her children and her fiancé. *Brockopp*, 78 Wn. App. at 443. But we have found no case requiring the court to impute income where the parent is both in

school and caring for children.

Jerry correctly observes that many single parents have balanced motherhood, school, and work. This does not mean, however, that the trial court cannot consider parenthood and school as factors affecting employability. At the time of trial, Shauna had a 12th grade education and had been out of the workforce for seven years. She was awarded full custody of the couple's three children, all of whom have had health concerns. She had been looking for work since separation, but did not believe she could find a job that paid enough to cover daycare costs. The trial court did not abuse its discretion in finding she would not be employable until she completed her training.

V. Extraordinary Expenses

Jerry claims that the trial court erred in assigning him 100 percent of the children's daycare and extraordinary medical expenses. The parents must share extraordinary health care expenses "in the same proportion as the basic child support obligation." RCW 26.19.080(2). The same proportional requirement applies to daycare expenses. RCW 26.19.080(3). The basic child support obligation is apportioned according to "each parent's share of the combined monthly net income." RCW 26.19.080(1). The trial court has discretion to determine necessary and reasonable deviations from the basic child support obligation. RCW 26.19.080(4). The trial court may deviate from the proportionality requirements as to extraordinary health care expenses and daycare if it finds reasons to deviate from the basic obligation. *In re Marriage of Casey*, 88 Wn. App. 662, 668, 967 P.2d 982 (1997). Where no grounds for deviation in the basic obligation exist, the exception cannot be applied to daycare and extraordinary health care. *In re Yeamans*, 117 Wn. App. 593, 601, 72 P.3d 775 (2003).

In *Casey*, for example, the mother's

income was approximately 10 percent of the parents' combined income. *Casey*, 88 Wn. App. at 667. While the standard calculation would assign her 10 percent of the basic obligation, we found no abuse of discretion in relieving her of this obligation "because a learning disability restricts her earning capacity, and such an obligation would reduce her income below poverty level, causing substantial hardship." *Casey*, 88 Wn. App. at 665. We then held that the trial court was entitled to assign the father all long distance travel costs. *Casey*, 88 Wn. App. at 667-68.

In contrast, the trial court in *Yeamans* did not deviate from the basic obligation. The parents' obligations were divided 70 percent/30 percent, in accordance with their shares of combined income. *Yeamans*, 117 Wn. App. at 599. Based on this standard calculation, Division One held that the trial court had abused its discretion by requiring the father to pay 100 percent of long distance travel and daycare costs. *Yeamans*, 117 Wn. App. at 601.

Similarly, here the trial court did not deviate from the basic obligation. The parents therefore must share the daycare and extraordinary health care costs. Notably, the trial court ordered that the parents pay these costs according to their proportional shares of income from line six of the child support schedule worksheet. Although the order listed this division as 0 percent/100 percent, line six of the worksheet actually states the parents' proportional shares of income as 48.8 percent for Jerry and 51.2 percent for Shauna. This is obviously a clerical error; the evidence was undisputed that Shauna had no income. Thus the order correctly listed Shauna's share of the income as 0 percent and Jerry's as 100 percent. Accordingly, the court did not err in ordering Jerry to pay 100 percent of the daycare and extraordinary health care costs.

VI. Attorney Fees

Jerry assigns error to the trial court's award of attorney fees. He claims that the court did not indicate the means of calculation on the

record and that, in any event, he is incapable of paying.

Shauna contends that Jerry cannot raise this issue on appeal because he did not object at trial and did not include the award in his notice of appeal. Generally, we will review an order or ruling not designated in the notice of appeal only if it prejudicially affects an order or ruling designated in the notice. RAP 2.4(b). The award of attorney fees was not mentioned in the notice of appeal. And Jerry has not explained how the attorney fees prejudicially affect the other issues discussed above. Accordingly, we decline to review it.

VII. Other Assignments of Error

Jerry assigned error to the trial court's evaluation of certain assets and liabilities. But he has not addressed the claimed errors in his brief. Accordingly, we do not address the issues. *See In re Welfare of Ott*, 37 Wn. App. 234, 239-40, 679 P.2d 372 (1984); RAP 10.3(a)(5).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Hunt, J.

Van Deren, A.C.J.